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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THE GILLETTE COMPANY

Appeal 2009-006719
Application 10/798,496
Technology Center 3700

Decided: October 27, 2009

Before JAMESON LEE, SALLY GARDNER LANE, and MICHAEL P.
TIERNEY, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, The Gillette Company (“Gillette”), under 35 U.S.C. § 134(a) from a final rejection of claims 1, 3-7, 13-16, 18-22, 24-26, 28, 29, 31, and 32. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

References Relied on by the Examiner

Wdowik	5,756,081	May 26, 1998
Tseng et al. (“Tseng”)	5,956,848	Sept. 28, 1999

The Rejections on Appeal

The Examiner rejected claims 1, 3-7, 13-16, 18-22, 24-26, 28, 29, 31, and 32 under 35 U.S.C. § 103(a) as unpatentable over Tseng and Wdowik.

The Invention

The invention relates to a shaving system having a skin-engaging portion that includes an ex-foliating element. (Spec. 2:1-2.)

Claim 1 is reproduced below (App. Br. 6 Claims App’x):

1. A wet shaving system comprising:

a blade member; and

a skin-engaging portion including a shaving aid composite comprising

a shaving aid matrix including a water-insoluble polymer and a shaving aid, and a plurality of exfoliating elements comprising abrasive particles embedded in the shaving aid matrix.

B. ISSUE

Has Gillette shown that the Examiner erred in determining that, collectively, Tseng and Wdowik teach a shaving system having a water-insoluble polymer and abrasive particles?

C. FINDINGS OF FACT

1. Tseng discloses a wet shaving system including a shaving aid composite or matrix. (Tseng 1:34-47.)

2. Specifically, in Tseng, a shaving cartridge 10 includes a housing 16 that carries a solid, polymeric shaving aid composite 22. (*Id.* at 2:46-48.)

3. The shaving aid composite includes a variety of water-insoluble polymers. (*Id.* at 3:33-38.)

4. Tseng does not describe that its shaving aid composite includes abrasive particles.

5. Wdowik discloses a shaving composition for use with a razor blade assembly. (Wdowik Abstract.)

6. The shaving composition may be in solid form (*Id.* at 1:10-14) and includes a plurality of particulate additives in the form of abrasive materials that aid in reducing nicks and cuts. (*Id.* at 3:1-5).

7. Wdowik further discloses that the abrasive materials also provide microscopic support for the razor blade assembly during shaving and desirably remove dirt, oils, stains, and dead skins cells from skin surfaces to provide improved smoothness and cleanliness when compared with conventional shaving compositions. (*Id.* at 3:62 - 4:7.)

8. Wdowik also discloses that its shaving composition includes insoluble polymers. (*Id.* at 6:50-65.)

D. PRINCIPLES OF LAW

If a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

E. ANALYSIS

The Examiner rejected claims 1, 3-7, 13-16, 18-22, 24-26, 28, 29, 31, and 32 as unpatentable over Tseng and Wdowik. All of the claims on appeal are argued collectively as a group. We focus on claim 1 in deciding this appeal.¹ The dispute centers on the requirement of a shaving aid matrix having a water-insoluble polymer and a plurality of abrasive particles. In particular, in claim 1, the requirement reads (App. Br. 6 Claims App'x):

a shaving aid matrix including a water-insoluble polymer and a shaving aid, and a plurality of exfoliating elements comprising abrasive particles embedded in the shaving aid matrix.

The Examiner determined that the combined teachings of Tseng and Wdowik satisfy claim 1, including the above-quoted limitation. The Examiner explained that Tseng discloses all the requirements of claim 1 with

¹ 37 C.F.R. § 41.37(c)(vii) (“When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone.”)

the exception of the exfoliating elements in the form of abrasive articles. To remedy the deficiency, the Examiner pointed to Wdowik as teaching a solid shaving aid composite or matrix having a plurality of exfoliating elements having abrasive particles. (Ans. 3:8-11.) The Examiner reasoned that (*Id.* at 3:15-17):

Therefore, it would have been obvious to a person of ordinary skill in the art to provide Tseng's shaving aid matrix with a plurality of exfoliating elements, as taught by Wdowik, in order to enhance exfoliation of the dead skin and removal of grease and oils.

Gillette contends that Tseng and Wdowik do not teach the above-quoted requirement of claim 1. In particular, Gillette states that (App. Br. 3:31-4:4):

It is Appellant's position that just because Wdowik discloses shaving compositions in solid form that include abrasive particles does not mean that one skilled in the art would have been motivated to marry an arguably similar composition with a shaving razor so that a user need not be bothered with the extra step of manually preparing the skin for shaving or treating the skin after shaving.

Gillette's argument is not persuasive.

Tseng discloses a wet shaving system including a shaving aid composite or matrix. (Tseng 1:34-47.) Specifically, in Tseng, a shaving cartridge 10 includes a housing 16 that carries a solid, polymeric shaving aid composite 22. (*Id.* at 2:46-48.) The shaving aid composite includes a variety of water-insoluble polymers. (*Id.* at 3:33-38.) Tseng, however, does not describe that its shaving aid composite includes abrasive particles.

Wdowik discloses a shaving composition for use with a razor blade assembly. (Wdowik Abstract.) The shaving composition may be in solid form (*Id.* at 1:10-14) and includes a plurality of particulate additives in the

form of abrasive materials that aid in reducing nicks and cuts. (*Id.* at 3:1-5.) Wdowik further discloses that the abrasive materials also provide microscopic support for the razor blade assembly during shaving and desirably remove dirt, oils, stains, and dead skins cells from skin surfaces to provide improved smoothness and cleanliness when compared with conventional shaving compositions. (*Id.* at 3:62 - 4:7.)

In light of those teachings, the Examiner determined that a person of ordinary skill in the art would have implemented the abrasive particles disclosed in Wdowik's solid shaving composition into the solid shaving composition of Tseng. That determination is reasonable. If a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *KSR Int'l Co.*, 550 U.S. at 416.

Here, the level of skill in the art of shaving is such that one with ordinary skill would have readily recognized that a shaving system having a solid shaving composition, such as in Tseng, would benefit from the use of abrasive particles incorporated in that composition as taught in Wdowik. In particular, a skilled artisan would have realized that when Wdowik's abrasive particles are implemented in the shaving system of Tseng, that system would desirably produce reduced nicks and cuts, improved blade stability, and improved skin smoothness during a shaving process. We reject Gillette's argument that a person of ordinary skill in the art would not have been motivated to combine the teachings of Tseng and Wdowik.

Gillette also argues (App. Br. 4:18-23):

Wdowik teaches the inclusion of abrasive particles in its shaving compositions but it does not teach or even suggest why a skilled artisan would want to incorporate a water-insoluble polymer in the composition to serve to release such particles over time from a composite (see page 7, lines 29-30 of present specification) that is highly moldable. The increased moldability of the composite is desirable in the present invention particularly due to the adherence and inclusion of the claimed material into a shaving system.

That argument is misplaced. The claims do not require a water-insoluble polymer that releases particles over time from a composite. Neither do the claims require a composite that is “highly moldable” or has “increased moldability.” The claims simply require a shaving aid matrix that includes a water-insoluble polymer and a plurality of abrasive particles. Both Tseng and Wdowik disclose shaving aid matrices or compositions that include water-insoluble polymers. (Tseng 3:33-38; Wdowik 6:50-65.) Wdowik teaches that such shaving aid compositions also desirably include abrasive particles. In light of the combined teachings of Tseng and Wdowik, the Examiner correctly determined that the shaving aid matrix requirement of Gillette’s claims is satisfied.

For all the foregoing reasons, we sustain the rejection of claims 1, 3-7, 13-16, 18-22, 24-26, 28, 29, 31, and 32 as unpatentable over Tseng and Wdowik.

F. CONCLUSION

Gillette has not shown that the Examiner erred in determining that, collectively, Tseng and Wdowik teach a shaving system having a water-insoluble polymer and abrasive particles.

G. ORDER

The Examiner rejection of claims 1, 3-7, 13-16, 18-22, 24-26, 28, 29, 31, and 32 under 35 U.S.C. § 103(a) as unpatentable over Tseng and Wdowik is affirmed.

AFFIRMED

KMF

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